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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,294	06/30/2005	James M Milliken	248.03	6643
37761 7590 10/18/2007 ERICKSON & KLEYPAS, L.L.C. 800 W. 47TH STREET, SUITE 401 KANSAS CITY, MO 64112			EXAMINER HAYES, KRISTEN C	
			ART UNIT 3643	PAPER NUMBER
			MAIL DATE 10/18/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/541,294

Applicant(s)

MILLIKEN, JAMES M

Examiner

Kristen C. Hayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 20050630, 20050830.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statements (IDS) submitted on 30 June 2005 and 30 August 2005 are being considered by the examiner.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 102, 104, 106, 108. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "236" has been used to designate both stitch and space. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement

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drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. The disclosure is objected to because of the following informalities: tube 230. (pg 13: lines 7-8, 9, 10). Reference character 230 is previously disclosed as flap.
5. The disclosure is objected to because of the following informalities: 236 indicates planting space. (pg 13: line 15). Reference character 236 is previously disclosed as thread.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

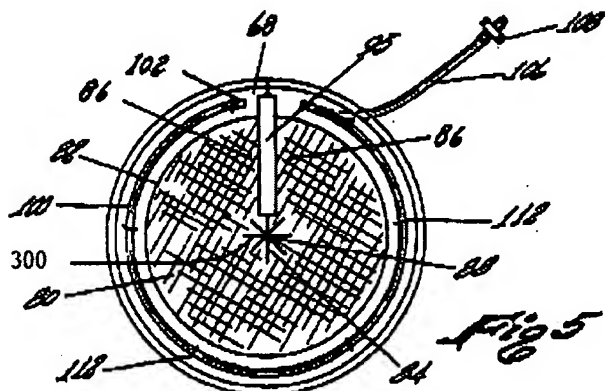
6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

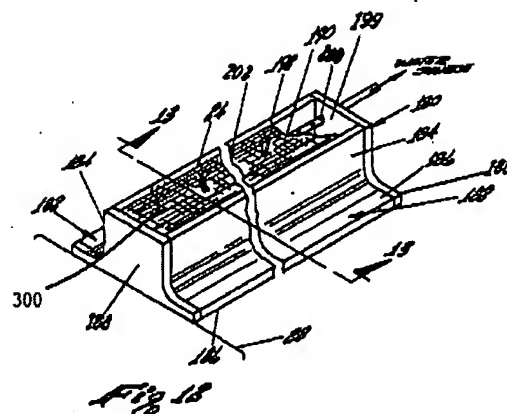
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 3-4, 7-8, 10-11, 13, 15-17 and 19-20 are rejected under 35

U.S.C. 102(b) as being anticipated by Baird US Patent 5,709,049.



Modified Figure 5, US Patent 5,709,049



Modified Figure 12, US Patent 5,709,049

8. Regarding claim 1, Baird discloses a garden weed barrier and watering apparatus (20 or 180) comprising a flexible sheet (80 or 190) of vapor-permeable material (Baird, column 2: lines 1-2), said sheet having reinforced outer edges (42 or 184, 186)(Baird, column 4: lines 7-9) and openings (Baird, Figure: 12) in said sheet for garden plant (24) stems to extend therethrough; means for weighting said edges to secure said sheet to the ground (Baird, column 2: lines 4-7); and a fluid-permeable (104) tube (100 or 200) secured to a lower surface of said sheet for delivering fluid to ground proximate to garden plants (Baird: column 8, lines 21-24).

9. Regarding claim 3, Baird discloses a device with the limitations of claim 1 further characterized by the sheet comprising a woven textile material (Baird, column 4: lines 33-34).

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10. Regarding claim 4, Baird discloses a device with the limitations of claim 1 further characterized by the sheet comprising a thermoplastic material (Baird, column 4: lines 38-40). As to the limitation of the thermoplastic material being felted, claim 4 is considered to be a product-by-process claim, and the examiner notes that it has been held that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. Additionally, the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985) {see MPEP 2113}.

11. Regarding claim 7, Baird discloses a device with the limitations of claim 1 further characterized by the openings being substantially rectangular (300) (Baird, column 7: lines 45-47). The slit in the sheet is considered to be a rectangular opening, meeting the limitations of the claim.

12. Regarding claim 8, Baird discloses a device with the limitations of claim 1 further characterized by the openings being arranged in one or more substantially parallel rows (Baird, column 7: lines 18-25). The devices are arranged in parallel pairs, therefore the openings are arranged in parallel rows.

13. Regarding claim 10, Baird discloses a device with the limitations of claim 1 further characterized by the means for weighting being rubber bars (Baird, column 7: lines 30-31).

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14. Regarding claim 11, Baird discloses a device with the limitations of claim 1 further characterized by the sheet being substantially opaque (Baird, column 7: lines 45-47, column 4: line 41).

15. Regarding claim 13, Baird discloses a device with the limitations of claim 1 further characterized by the tube comprising means for restricting flow of fluid therethrough (108)(Baird, Figure: 2). The change in diameter of element (108) would restrict the flow of fluid, meeting the limitations of the claim.

16. Regarding claim 15, Baird discloses a device with the limitations of claim 13 further characterized by the means for restricting comprises a conical flow restrictor (108) comprising a cone having a flange projecting from the base of said cone (Baird, Figure: 2) and an axial bore (Baird, column 5: lines 22-24) through the longitudinal center of said conical flow restrictor.

17. Regarding claim 16, Baird discloses a garden weed barrier and watering apparatus (20, 180) comprising landscape fabric (Baird, column 2: lines 1-2), having edge portions (42 or 184, 186) weighted to retain said fabric in a selected position upon the ground (Baird, column 2: lines 4-7), openings (88 or 300) (Baird, column 7: lines 45-47) within said fabric for receiving garden plants (24), and a water-permeable tube (100 or 200) (Baird, column 5: lines 17-18) attached to the underside of said fabric.

18. Regarding claim 17, Baird discloses a device with the limitations of claim 16 further characterized by the tube (100 or 200) having segments thereof attached in close proximity to corresponding openings (Baird, Figure: 12).

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19. Regarding claim 19, Baird discloses a device with the limitations of claim 19 further characterized by the openings (88 or 301) being partially defined by respective portions of the tube (100 or 200) (Baird, Figure: 5).

20. Regarding claim 20, Baird discloses a method of gardening whereby weeds are suppressed through obstruction of sunlight, and fluids are delivered to garden plants via a conduit (100), the method comprising the steps of: providing an opaque vapor-permeable sheet having weighted outer edges (Baird, column 2: lines 1-2, column 7: lines 45-47, column 4: line 41, column 2: lines 4-7) and having openings (Baird, Figure: 12) for garden plants to extend therethrough, attaching a fluid-permeable conduit (104 and 100 or 200) to the underside of the sheet, applying the sheet to an area of ground, and directing water to the conduit for flow therethrough at intervals selected for (Baird, column 2: lines 30-32) encouraging plant growth. Given the structure of Baird is the same as the claimed structure the method is inherently performed.

Claim Rejections - 35 USC § 103

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

22. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baird US Patent 5,709,049.

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23. Regarding claim 14, Baird discloses a device with the limitations of claim 13.

Baird does not disclose the means for restricting comprising a flat plastic disk with an aperture positioned within the tube. However, the examiner takes official notice that this is well known in the art to restrict the flow of fluid. The disk blocks the flow of the fluid, and the size of the aperture changes the area the fluid flows through, determining the mass and volumetric flow rates of the fluid. This is an effective, simple way to restrict the flow of fluid through a tube or pipe. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Baird with a flat plastic disk comprising an aperture, positioned within the tube to provide a simple way to restrict the flow of fluid through the tube, as known to those in the art.

24. Claims 1-2, 5-6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over DiGrassi US Patent 4,833,822.

25. Regarding claim 1, DiGrassi discloses a garden weed barrier and watering apparatus (10) comprising a flexible sheet (12) of vapor-permeable material (DiGrassi, column 4: lines 27-28), said sheet having reinforced outer edges (DiGrassi, column 4: lines 44-46) and openings (14)(DiGrassi, column 4: lines 31-34) in said sheet for garden plant stems to extend therethrough; means for weighting said edges to secure said sheet to the ground (16)(DiGrassi, abstract: lines 7-8); and a fluid-permeable (18, 20) tube (16) secured to the sheet for delivering fluid to ground proximate to garden plants (DiGrassi, column 4: lines 35-40). The properties of the plastic sheet of DiGrassi are not discussed however, vapor permeable plastic is known in the art. Therefore, the sheet of DiGrassi is seen as meeting the limitations of the claim. DiGrassi also does not distinctly

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disclose the tube being fluid-permeable, or it being secured to the underside of the sheet. However, the examiner takes official notice that fluid-permeable tubes are known in the art. This would allow the tube to serve as a drip irrigation system for the device. Extra parts, hoses, or tubes would not be needed. Also, the tube being on a lower surface of the sheet would prevent the tube from obstructing places where the user might need to stand or walk. This also prevents the tube from becoming damaged by elements, the user or animals. Therefore, it would have been obvious to one of ordinary skill in the art to modify the tube of DiGrassi with a fluid-permeable tube and place the tube on the lower surface of the sheet so that the tube could serve as a drip irrigation system unobstructed area.

26. Regarding claim 2, DiGrassi discloses a device with the limitations of claim 1 further characterized by the sheet comprising a non-woven polymer film (DiGrassi, column 4: lines 27-29).

27. Regarding claim 5, DiGrassi discloses a device with the limitations of claim 1 wherein the edges are reinforced by double layers of the sheet secured by heat bonding (DiGrassi, column 4: lines 44-46).

28. Regarding claim 6, DiGrassi discloses a device with the limitations of claim 1 wherein the edges have holes (24) therein for accepting stakes or to provide additional retention of the apparatus against the surface of the ground (DiGrassi, column 4: lines 40-44).

29. Regarding claim 9, DiGrassi discloses a device with the limitations of claim 1 further characterized by the openings (14) being circular.

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30. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baird US Patent 5,709,049 in view of Rivas et al US Patent D437,194.

31. Regarding claim 12, Baird discloses a device with the limitations of claim 1 but does not disclose the openings arranged in one or more concentric rings. However, Rivas teaches opening arranged in concentric rings (Rivas, Figure: 5). The openings arranged concentric rings allow the plants to be kept in neat rows and creates aisles between the rows. This allows the user easy access to plants on the inner rings. Also, with the openings arranged as such there is only need for one fluid tube to be provided. The tube could wind in circles corresponding to the concentric circles of the openings, or they could be placed between the rows. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the placement of the openings of Baird with the placement of the openings of Rivas to allow the user easy access to the plants and to allow for the use of a single fluid tube.

32. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baird US Patent 5,709,049 in view of Odenkirk US Patent 3,029,558.

33. Regarding claim 18, Baird discloses a device with the limitations of claim 16 further characterized but does not disclose weights secured within pockets. However, Odenkirk teaches the edge portion comprising weights secured within edge pockets (Odenkirk, column 2: lines 66-68). The weights being secured within edge pockets would allow the weights to be interchangeable. If more or less weight was needed, it could be added or removed from the edge pockets accordingly. This would allow the device to be used in a variety of applications and environments. Also, different weighing

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means such as sand or water could be used. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Baird with the weights secured in edge pockets of Odenkirk to allow the weights of the device to be interchangeable.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen C. Hayes whose telephone number is 571-270-3093. The examiner can normally be reached on Monday-Thursday, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571)272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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KCH

2 October 2007

A handwritten signature in black ink, appearing to read "Peter Poon for".

Peter Poon

Supervisory Patent Examiner

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